

§ 780.147

found that the following two factors tipped the scales so as to take the employees of tobacco bulking plants outside the scope of agriculture: Tobacco farmers do not ordinarily perform the bulking operation; and, the bulking operation is a process which changes tobacco leaf in many ways and turns it into an industrial product.

§ 780.147 Practices performed on farm products—special factors considered.

In determining whether a practice performed on agricultural or horticultural commodities is incident to or in conjunction with the farming operations of a farmer or a farm, it is also necessary to consider the type of product resulting from the practice—as whether the raw or natural state of the commodity has been changed. Such a change may be a strong indication that the practice is not within the scope of agriculture (*Mitchell v. Budd*, 350 U.S. 473); the view was expressed in the legislative debates on the Act that it marks the dividing line between processing as an agricultural function and processing as a manufacturing operation (*Maneja v. Waialua*, 349 U.S. 254, citing 81 Cong. Rec. 7659-7660, 7877-7879). Consideration should also be given to the value added to the product as a result of the practice and whether a sales organization is maintained for the disposal of the product. Seasonality of the operations involved in the practice would not be very helpful as a test to distinguish between operations incident to agriculture and operations of commercial or industrial processors who handle a similar volume of the same seasonal crop. But the length of the period during which the practice is performed might cast some light on whether the operations are conducted as a part of agriculture or as a separate undertaking when considered together with the amount of investment, payroll, and other factors. In some cases, the fact that products resulting from the practice are sold under the producer's own label rather than under that of the purchaser may furnish an indication that the practice is conducted as a separate business activity rather than as a part of agriculture.

29 CFR Ch. V (7-1-11 Edition)

PRACTICES INCLUDED WHEN PERFORMED AS PROVIDED IN SECTION 3(f)

§ 780.148 “Any” practices meeting the requirements will qualify for exemption.

The language of section 3(f) of the Act, in defining the “secondary” meaning of “agriculture,” provides that any practices performed by a farmer or on a farm as an incident to or in conjunction with such (his or its) farming operations are within the definition. The practices which may be exempt as “agriculture” if so performed are stated to include forestry or lumbering operations, preparation for market, and delivery to storage or to market or to carriers for transportation to market. The specification of these practices is illustrative rather than limiting in nature. The broad language of the definition clearly includes all practices thus performed and not merely those named (see *Maneja v. Waialua*, 349 U.S. 254).

§ 780.149 Named practices as well as others must meet the requirements.

The specific practices named in section 3(f) must, like any others, be performed by a farmer or on a farm as an incident to or in conjunction with such farming operations, for this condition applies to “any” practices brought within the secondary meaning of agriculture as defined in that section of the Act. Thus the preparation for market, by a farmer's employees on a farm of animals to be sold at a livestock auction is not within section 3(f) if animals from other farmers and other farms are also handled. The practice is not performed as an incident to or in conjunction with “such” farming operations, that is, the operations of the farmer by whom, or of the farm on which, the livestock is raised (*Mitchell v. Hunt*, 263 F. 2d 913).

PREPARATION FOR MARKET

§ 780.150 Scope and limits of “preparation for market.”

“Preparation for market” is also named as one of the practices which may be included in “agriculture.” The term includes the operations normally performed upon farm commodities to prepare them for the farmer's market. The farmer's market normally means